IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 12TH NOVEMBER 2007 / 21ST KARTHIKA 1929

WP(C).No. 33255 of 2007(H)

AGAINST THE ORDER IN IA 2872/2007 IN
OS.903/1998 of PRL.MUNSIFF COURT, CHERTHALA

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PETITIONER:

V.V.HARIDAS, S/O.VELAYUDHAN,
VELAMPARAMBIL, VADAKKUM MURI,
CHERTHALA NORTH VILLAGE, ALAPPUZHA.

BY ADV. SRI.N.K.SUBRAMANIAN
SRI.S.ANANTHAKRISHNAN

RESPONDENTS:

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1. LEELAMMA, D/O.BHARATHIAMMA,
PUTHU PARAMBU NIKARTHIL,
THIRUNALLOOR MURI, PALLIPPURAM VILLAGE,
ALAPPUZHA.

2. PRABHAKARAN, S/O.NARAYANAN,
PUTHU PARAMBU NIKARTHIL,
THIRUNALLOOR MURI, PALLIPURAM VILLAGE,
ALAPPUZHA.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 12/11/2007 , THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.Krishnan, J.

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W.P(C).No.33255 of 2007

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Dated this the 12th day of November, 2007.

JUDGMENT

This Writ Petition is filed to quash Ext.P6 and direct the Munsiff, Cherthala to dispose of I.A.No.2872 of 2007 in O.S.No.903 of 1998 independently prior to the trial of the suit. Heard counsel for the petitioner.

2. Defendant in a suit for specific performance is the writ petitioner before this Court. There was an ex parte decree passed against the defendant and on the strength of decree the property has been taken delivery by the plaintiffs. Thereafter, this Court had set aside the ex parte decree. Now the writ petitioner has moved an application before the court for re-delivery of the property with a further request that the trial of the suit need be done after consideration of the said application. The court below by Ext.P6 order held that it can be considered along with the suit. I do not find any mistake committed by the court below as the matter is already listed for trial and finality can be achieved if the matter is disposed of.

3. Therefore, I do not propose to interfere with the order passed by the court below. I am informed that the plaintiffs in the suit by virtue of the delivery are indiscriminately causing

damage to the property which cannot be allowed because if ultimately the defendant is entitled to the relief, there will be substantial loss for them.

4. Therefore, I dispose of the Writ Petition permitting the writ petitioner to move an application before the court below. The court below shall pass appropriate orders if it really feels that damage is committed in the property and the court below shall immediately pass some urgent orders so as to preserve the property till the disposal of the suit. I make it clear that the court shall not postpone that injunction application to be filed by the writ petitioner till ultimate decision in the suit because it will affect the very right of the parties in the case. The court also may take into consideration the Commissioner's report which will give an idea as to what is happening in the property now.

Writ Petition is disposed of accordingly.

M.N.Krishnan,
Judge.

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